

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

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CC:PSI:B06

PLR-145678-07

Date:

February 12, 2008

LEGEND

Taxpayer =

Subsidiary 1 =

Subsidiary 2 =

Year 1 =

Year 2 =

Year 3 =

Dear :

This responds to a letter dated October 10, 2007, from your representative requesting permission, under § 301.9100-(1)(a) of the Procedure and Administration Regulations for an extension of time to make an election under § 263(c) of the Internal Revenue Code.

According to the submission, Taxpayer is a parent corporation of a consolidated group of which Subsidiary 1 and Subsidiary 2 are members. Beginning in Year 1, Taxpayer, through Subsidiary 1 began investing directly in oil and gas operations and incurring intangible drilling and development costs (IDC). At the time of the initial direct investments, Taxpayer's tax department staff, which prepares its own tax returns, did not have experience or knowledge with respect to oil and gas operations and the taxation thereof. Although it was always the intention of Taxpayer to currently deduct all allowable expenses associated with its oil and gas investments, it was not aware of the ability to deduct IDC pursuant to § 263(c) or the need to make an election under § 1.612-4 of the Income Tax Regulations in order to do so. As a result, Taxpayer did not deduct IDC on the Year 1 return or any subsequent return.

In Year 2, Subsidiary 1 converted into a single member limited liability company and, for federal income tax purposes, became an entity disregarded from its owner. As such, it was deemed to have liquidated into its single member, Subsidiary 2 for purposes of § 301.7701-3(g)(1)(iii). Again, as Taxpayer was not aware of the ability to deduct IDC pursuant to § 263(c) or the need to make an election under § 1.612-4, no election was made. Taxpayer continued to capitalize IDC and recover through depletion and depreciation.

In Year 3, Taxpayer and its subsidiaries engaged an accounting firm to perform an overall review of its tax accounting for oil and gas operations. During that review, the accounting firm discovered that neither Subsidiary 1 nor Subsidiary 2 had elected to currently deduct IDC related to oil and gas investments in Year 1 or in Year 2. The accounting firm advised Taxpayer to submit a request for relief under § 301.9100-1 for an extension of time to make the election under § 263(c) and § 1.612-4. This request is being made pursuant to such advice.

Taxpayer represents that had Taxpayer been aware of the ability to currently deduct IDC and the need to make an election to deduct such costs on the return for the first taxable year in which it incurred these costs, Taxpayer, on behalf of its subsidiaries, would have timely made this election on the consolidated return.

Section 263(c) provides an election, under regulations prescribed by the Secretary, to deduct intangible drilling and development costs. The regulations appear under § 1.612-4. Section 1.612-4(d) states that the election may be exercised by claiming IDC as a deduction on the taxpayer's return for the first taxable year in which the taxpayer pays or incurs such costs. No formal statement is necessary, but if the taxpayer fails to deduct the IDC, it is deemed to have elected to recover such costs through depletion.

Under § 301.9100-1(c), the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(d)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Section 301.9100-3(a). Section 301.9100-3(b) provides, in relevant part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this letter to make the election on an amended return to deduct IDC with the appropriate service center. A copy of this letter should be attached to the amended return. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code and the Regulations thereunder. Specifically, no opinion is expressed concerning whether Taxpayer satisfies the requirements of § 263(c).

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)